

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on)	RULE AND REGULATION NO. 171
its own motion, seeking to amend)	
Title 291, Chapter 10, Nebraska)	
Universal Service Fund Rules and)	ORDER REVISING PROPOSED
Regulations, to update the chapter)	AMENDMENTS, SEEKING COMMENT
in its entirety and to reorganize)	AND SCHEDULING HEARING
the chapter by the nature of the by)	
program supported the NUSF.)	Entered: August 19, 2008

BY THE COMMISSION:

On February 26, 2008, the Commission opened this docket seeking comment on proposed rule and regulation amendments in Title 291, Chapter 10, the Nebraska Universal Service Fund Rules and Regulations. Comments were filed by interested persons on April 28, 2008. The comments filed were posted to the Commission's website at www.psc.state.ne.us. On June 19, 2008 a workshop was held to discuss the proposed rule amendments. A number of interested parties attended the workshop and the proposed rules and comments were discussed.

Based on the comments received, the Commission hereby enters this order revising in part the proposed rule amendments and seeking further comment. The Commission also schedules a hearing on the rule amendments now that permission from the Governor's Policy Research Office has been received.

This order generally discusses revisions to the proposed rules; however, some minor revisions may have been made which are not discussed in this order. The minor revisions were grammatical in nature or intended to provide greater clarity to the proposed rules. The revised version of the proposed rule amendments are attached to this order.

Requests to Stay the Rulemaking:

Qwest and Verizon request the Commission stay the rulemaking or delete the provisions relative to assessments on Interconnected Voice over Internet Protocol (VoIP) providers. Both companies recommend that the Commission wait due to the ongoing litigation regarding assessment on nomadic VoIP providers such as Vonage. However, a rulemaking proceeding generally takes the Commission substantial time due to the publication and review requirements placed on all state agencies. Rather than wait, the Commission finds it prudent to push ahead in this rulemaking. It is substantially easier for the Commission to delete a proposed rule than to add one later on in the process. If the Commission is ultimately required to tailor its rules differently as it pertains to nomadic VoIP providers, then it will do so at that time. Accordingly, Qwest's motion to dismiss or stay the rulemaking is

denied. Verizon's recommendation to stay the rulemaking is likewise rejected.

Definitions:

The Commission revised in part certain definitions as discussed in the workshop. The Commission added a definition for wireless carrier and amended the definition of Interconnected Voice over Internet Protocol Service. The Commission also defined the term "user" as suggested by the Rural Independent Companies.

The Commission declines to adopt a definition of the high-cost program in the rules. The Commission believes the goals as stated in the Nebraska Telecommunications Universal Service Fund Act (NUSF Act) and as interpreted by the Commission's order in Docket NUSF-26 are sufficient.

Collection of the NUSF Surcharge:

The Commission clarified section 2.01D at the recommendation of Embarq and Qwest which explains the Commission has not changed its position relative to assessment on interstate portions of telecommunications. The Commission also separately lists prepaid wireless instead of grouping all wireless providers together in rule 002.01B2. Finally, as noted in the workshop, the Commission amended section 002.01D1 to clarify the safe harbor provision.

In addition, a section was added to address Verizon's comments that a de minimis waiver provision should be added to our rules. As to what the Commission may consider de minimis has not yet been determined. The rule simply states that the Commission may grant a waiver to companies to allow them to remit the surcharge without passing the surcharge on to their subscribers when the number of customers in Nebraska is considered de minimis.

Embarq questioned the placement of rule 002.04B and suggested that it should be moved to section 006. This rule, however, really speaks to collection of the NUSF surcharge and the certification of companies that they are exempting NTAP customers. While the rule is broader than just the surcharge exemption, we will leave the rule where it is for the present time.

Remittances:

A number of commenters requested the Commission clarify or define what is meant by rule 003.05 and the use of the term "audit." The Commission added some proposed language to the rule stating that the term "audit" shall be defined more specifically in Commission orders. The agreed-up-procedures currently used by the Commission need to be flexible and may change with the needs of the Department and the

Commission. In addition, the Commission may subject companies to more rigorous requirements where necessary. Accordingly, the Commission would prefer not to define the term "audit" by rule and regulation.

Section 003.07 requires companies to notify the Commission if they are no longer going to be filing remittances with the Commission prior to stopping. While the first sentence of the rule is not new policy, the second sentence regarding the notice provision is the heart of the rule. In the attached rule amendments, the Commission slightly modifies this rule but does not change the heading or adopt the changes suggested by the Rural Independent Companies.

Payments:

A number of commenters suggest the Commission further define "reasonably comparable rates." The rule as presently drafted says that "reasonably comparable rates" will be determined by Commission order. In NUSF-50, the Commission gave further guidance on what it considered a reasonably comparable range of rates, i.e., \$17.50 to \$19.95. In addition, the Commission would consider on a case by case basis arguments presented by companies should this be an issue. The Commission declines to change the rule at this time because that flexibility is desired.

The attached rules reflect the changes suggested by the Rural Independent Companies for rule 004.02A4. The Commission believes this provides clarification of the rule.

Embarq requested clarification of proposed rule 004.02F1 to show that the Commission's NUSF-25/NUSF-66 order requires submission of not only investment information but also companies' expenses. The Commission agrees with Embarq and the proposed rule is clarified adding expenses to the description.

The Rural Independent Companies commented that rule 004.02F3 should be deleted because of Section 009 in 291, Neb. Admin. Code, Chapter 5. However, this requirement is not specifically in Section 009 and has always been a part of the NUSF-25 filing. Accordingly, we will retain this rule. It applies to non-rural companies and the states' certification to the Federal Communications Commission that they are charging reasonably comparable rates.

In response to Embarq's comments, the Commission adds a section in 004.02G1 to relieve the incumbent local exchange carrier (ILEC) of "carrier of last resort" (COLR) obligations if the Commission grants the petition of a competitive local exchange carrier (CLEC) replacing the ILEC as the one designated provider in the area for the high-cost program support.

The Commission proposes to keep rule 004.07 as it currently is drafted. This rule applies to payment audits while rule 003.05 applies to remittance audits. Rule 004.07 represents current Commission practice for payment audits.

Several commenters had concerns about proposed rule 004.08C regarding director adjustments. The Commission made a slight change to this rule; however, the Commission recognizes the proposed rule warrants further discussion.

Nebraska Telephone Assistance Program (NTAP):

Qwest commented that the Commission should change rule 006.02B1 regarding the eligibility date. The Commission declines at this time to allow the companies to set their own eligibility dates for the commencement of Lifeline support. The Commission is generally the point of contact for NTAP recipients. Accordingly, it needs to be able to correctly inform Lifeline recipients of the eligibility date. Qwest's proposed change would permit companies to establish eligibility dates based on circumstances outside of the Commission's knowledge and control. This created problems for the Commission staff in the past. Accordingly, the Commission made slight changes to this rule but does not accept Qwest's recommendation.

The Rural Independent Companies suggested changes to rule 006.02C to limit their exposure for past due balances of customers. The Commission declines to make this change as well. The Commission does not want to discourage a Lifeline participant who may have a significant past due balance from receiving assistance from the program, particularly where Lifeline credits may not be immediately applied. The Commission believes that the current proposed rule strikes a reasonable balance and accommodates users who are making good faith efforts to pay on past due balances. In addition, the Commission did not accept the proposed change in 006.02E regarding service deposits.

Comment Cycle:

The Commission releases the revised rule amendments which are attached hereto as Appendix and fully incorporated herein for public comment. Commenters shall file eight (8) paper copies and one (1) electronic copy in Word format with the Commission on or before **September 22, 2008**. Electronic copies of the comments may be electronically mailed to Kathy.Lahman@psc.ne.gov.

Public Hearing:

A public hearing on these proposed rule amendments is hereby scheduled for **October 29, 2008** at 1:00 p.m. in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska 68508.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the revised rule amendments attached hereto as Appendix be and they are hereby released for public comment.

IT IS FURTHER ORDERED that comments will be accepted by the Commission if filed on or before **September 22, 2008** in the manner prescribed above.

IT IS FURTHER ORDERED that a public hearing on the proposed rule amendments will be held in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska 68508 on **October 29, 2008** at 1:00 p.m. CDT.

MADE AND ENTERED at Lincoln, Nebraska this 18th day of August, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

APPENDIX

001 GENERAL: **All definitions listed in alphabetical order and renumbered as needed.**

001.01 Definitions: As used in this chapter, unless the context otherwise requires, the following definitions shall apply:

001.01A Access Charge Pass-Through: Changes in charges for interexchange services that correspond to changes in charges for access services ordered by the Commission pursuant to Neb. Rev. Stat. Section 86-140 ~~75-609(2)~~ ~~(Reissue 1996)~~.

001.01B Access Service: The offering of access to exchange services or facilities for the purpose of the origination or termination of interexchange services.

001.01C Assessable Revenue: Revenues defined by Commission Rule to be subject to the Nebraska Universal Service Fund surcharge. The Commission may, on an interim basis, designate services to be subject to the NUSF surcharge by order until such time as a rulemaking can be completed.

001.01D Basic Local Exchange Service: The origination, termination, and transmission of two-way switched voice telecommunications or its functional equivalent within a local exchange area, excluding extended area service(s).

001.01E Benchmark Price: The target price for a telecommunications service as determined by Commission order.

001.01F Calendar Year: The period from January 1 of one year to December 31 of the same year.

001.01G Commission: The Nebraska Public Service Commission.

001.01H Connection Charges: Charges assessed for commencing services including any charges that a telecommunications company automatically assesses to provide ~~subscribers~~ the user with telecommunications services.

001.01I Department: The Department established within the Commission for the administration of the Nebraska Universal Service Fund.

001.01J Director: The Director of the Department established within the Commission for the administration of the Nebraska Universal Service Fund.

001.01K Eligible Telecommunications Carrier: An eligible telecommunications carrier is a carrier designated by the Commission pursuant to 47 U.S.C. § 214(e) to receive monetary support from the Federal Universal Service Fund.

001.01L Extended Area Service: A telecommunications service which groups two or more local exchange areas for the origination, termination, and transmission of two-way switched voice telecommunications or its functional equivalent without an interexchange toll charge or an optional enhanced area calling plan that has been found acceptable by the Commission.

001.01M Federal Act: The federal Communications Act of 1934, as amended, including the federal Telecommunications Act of 1996, Public Law 104-104.

001.01N Fiscal Year: The period from July 1 of one year to June 30 of the following year.

001.01O Interconnected Voice over the Internet Protocol Service: A service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires IP-compatible User premises equipment; and (4) permits users to receive calls which originate on the public switched telephone network and to terminate calls to the public switched telephone network.

001.01P Interexchange Service: Telecommunications service between points in different local exchange areas.

001.01Q Local Exchange Area: A geographical area established by a telecommunications company for the administration of telecommunications services for purposes of the NUSF, generally encompassing a city, town, or village and its environs approved by the Commission.

001.01R Nebraska Eligible Telecommunications Carrier (NETC): A telecommunications company specifically designated by Commission order to receive support from the Nebraska Universal Service Fund consistent with the Federal Act and ~~State Law~~ Nebraska statutes.

001.01S Nebraska Universal Service Fund (NUSF): The Nebraska Telecommunications Universal Service Fund as described in Neb. Rev. Stat. Sections 86-316 through 86-329 ~~86-1401 et. seq.~~ and administered in accordance with the Commission rules and regulations and Commission orders.

001.01T NUSF Surcharge: The NUSF surcharge set annually by Commission order pursuant to Neb. Rev. Stat. Section 86-328 ~~86-1409~~.

001.01U Service Area: A geographic area designated by the Commission in which an NETC ~~must~~ shall provide service.

~~001.01S Subscriber: Any person, firm, partnership, corporation, limited liability company, municipality, cooperative, organization, governmental agency or any other entity provided with telecommunications service by a telecommunications company.~~

001.01V Support Area: A geographic area within a service area designated by the Commission in which an NETC receives a specific level of NUSF support.

001.01W Supported Service: A group of telecommunications services, excluding interexchange service and extended area service, designated by Commission Rule for which an NETC providing such service may receive support from the NUSF. The Commission may, on an interim basis, in accordance with Commission rules and regulations, designate a supported telecommunications service by order until such time as a rulemaking can be completed.

001.01X Telecommunications: The transmission, between or among points specified by the user ~~subscriber~~, of information of the user's ~~subscriber's~~ choosing, without a change in the form or content of the information as sent and ~~or~~ received.

001.01Y Telecommunications Company: Any natural person, firm, partnership, limited liability company, corporation, or association ~~entity~~ providing telecommunications offering telecommunications service for hire in Nebraska intrastate commerce without regard to whether such entity ~~company~~ holds a certificate or permit from the Commission.

001.01Z Telecommunications Service: The offering of telecommunications for a fee.

001.01AA User: Any person, firm, partnership, corporation, limited liability company, municipality, cooperative, organization, governmental agency or any other entity provided with telecommunications or telecommunications service by a telecommunications company.

001.01BB Wireless Carrier: Any natural person, firm, partnership, limited liability company, corporation or association providing mobile radio service, radio paging service, or wireless telecommunications service for a fee in Nebraska intrastate commerce.

001.02 Procedures involving the administration of the NUSF shall be governed by the Nebraska Universal Service Fund Rules and the Rules of Commission Procedure unless otherwise prescribed by order of the Commission.

001.03 The Commission will specify, by order, the manner in which information shall be filed with the Department. Upon a showing of good cause, the Director may accept information filed in a manner other than prescribed in a Commission order.

002 COLLECTION OF THE NUSF SURCHARGE:

002.01 Assessable Revenue: The NUSF surcharge shall be assessed on all providers of telecommunications and user telecommunications services provided in Nebraska intrastate commerce. Telecommunications companies shall collect and remit the NUSF surcharge.

002.01A The NUSF surcharge shall be assessed on providers of telecommunications services in accordance with Commission rules and regulations and Commission orders.

002.01B Specific Categories of Telecommunications Service subject to the NUSF Surcharge:

002.01B1 Local Exchange Service:

002.01B1a Charges for monthly service, local calling, extended area service or its functional equivalent, connection charges, vertical features and other local exchange service.

002.01B1b Charges for ~~l~~ocal private line and special access service.

002.01B1c Other local exchange service revenues not explicitly excluded in Rule 002.01D.

002.01B2 Commercial Mobile ~~Radio Services, Radio Paging Ser-~~ vices and Wireless Telecommunications Services:

002.01B2a Monthly service and activation charges.

002.01B2b Message charges including roaming, but excluding toll charges.

002.01B2c All other commercial mobile radio service, radio paging service and wireless telecommunications service revenues not explicitly excluded in Rule 002.01D.

002.01B2d Prepaid wireless activation charges and sales (including sales to customers and non-carrier distributors) reported at face value of cards.

002.01B3 Interexchange Services:

002.01B3a Prepaid calling card (including card sales to customers and non-carrier distributors) reported at face value of cards.

002.01B3b Operator and toll calls with alternative billing arrangements (credit card, collect, call-back, etc).

002.01B3c Ordinary interexchange (direct dialed MTS, customer toll-free 800/888 service, "10-10" calls, associated monthly account maintenance, etc).

002.01B3d Interexchange private line services.

002.01B3e All other interexchange services not explicitly excluded in Rule 002.01D.

002.01B4 Interconnected Voice Over the Internet Protocol Services:

002.01B4a Charges for monthly service and activation. Charges for vertical features if charged separately or bundled.

002.01B5 Radio Paging Services:

002.01B5a Monthly service and activation charges.

002.01B5b Message charges including roaming.

002.01B5c All other radio paging service not explicitly excluded in Rule 002.01D.

002.01C Hotels, Motels and Other Entities:

002.01C1 The NUSF surcharge shall be assessed on charges made to hotels, motels and other entities for telecommunications services that may be re-billed by the user ~~customer~~ to another party.

002.01D ~~Excluded~~ Other Services:

002.01D1 Interstate Telecommunications, Chargers and Surcharges ~~Services~~: The NUSF surcharge shall not apply on the interstate portion of telecommunications. When the intrastate portion of telecommunications cannot be determined or if such determination would result in an undue administrative burden, a telecommunications company may request that the Commission approve an allocation factor to determine the intrastate portion of the service or the Commission may adopt a relevant Federal Communications Commission safe harbor provision.

002.01D1a Joint Use Services: In cases where a charge is made for both intrastate and interstate telecommunications service, and the interstate telecommunications service is not charged separately or cannot be readily determined, the NUSF surcharge shall apply to the total charge, except as provided in Rule 002.01D1b.

002.01D1b Allocation Factor: When the intrastate portion of a joint use service charge cannot be determined or if such determination would result in an undue administrative burden, a telecommunications company may request that the Commission approve an allocation factor to determine the intrastate portion of the service or may adopt any relevant ~~FCC~~ Federal Communications Commission safe harbor provisions.

~~002.01D1~~ 002.01D2 Federal Charges and Surcharges: The NUSF surcharge shall not be assessed on ~~interstate telecommunications services. Interstate telecommunications services include~~ Federal Subscriber Line Charges (SLC), Primary Interexchange Carrier Charges (PICC), Number Portability Surcharges, and similar federal charges and surcharges.

~~002.01D2~~ 002.01D3 Pay Telephone Coin Revenue: The NUSF surcharge shall not be assessed on coin services provided from pay telephones.

~~002.01D3~~ 002.01D4 Intermediate Services: The NUSF surcharge shall not be assessed on intermediate telecommunications services, such as access service, that are provided by one telecommunications company to another as long as the company receiving such service collects the NUSF surcharge from the retail services that it provides to its ~~subscribers~~ users through the use of the intermediate service.

~~002.01D4~~ 002.01D5 Taxes and Surcharges: The NUSF surcharge shall not be assessed on local, state, or federal taxes, 911 surcharges, telecommunication relay service surcharges, or similar taxes or surcharges.

002.02 NUSF Surcharge Shown on ~~Subscriber~~ User Bills: The NUSF surcharge shall be explicitly shown on ~~subscriber~~ user bills as "NE Universal Service".

002.02A De Minimis Waiver: The Commission may grant a waiver from the requirement of section 002.02 to a telecommunications company upon application for good cause when the amounts to be

collected from the user are de minimis as such term is defined by the Commission in an Order.

002.03 Uncollectible Amounts: Telecommunications companies shall be allowed to deduct uncollectible amounts from revenues that are subject to assessment of the NUSF surcharge.

002.03A Non-Payment of the NUSF Surcharge: Non-payment of the NUSF surcharge shall be considered non-payment for the service rendered by the telecommunications company and shall be subject to appropriate remedies, including disconnection of service.

002.04 Exemptions:

002.04A Lifeline Nebraska Telephone Assistance Program Recipients: Qualifying ~~subscribers~~ users that are enrolled in the Nebraska ~~Lifeline Service~~ Telephone Assistance Program (NTAP) are exempt from assessment of the NUSF surcharge. This exemption is limited to the single local exchange service line receiving NTAP Lifeline support and the services provided thereon.

002.04B All companies providing telecommunications service in Nebraska, as defined by 001.01Z, must file an annual affidavit with the Department attesting to the compliance with all Rules and Regulations and Commission Orders for the Nebraska Telephone Assistance Program.

003 REMITTANCE:

003.01 Filing Options:

003.01A Monthly: Telecommunications companies shall remit the NUSF surcharge on a monthly basis to the NUSF except as provided in Rule 003.01B.

003.01B Quarterly: A telecommunications company whose assessable revenue is less than \$20,000 for a given ~~fiscal~~ calendar year may remit on a quarterly basis to the NUSF. A company who elects to file on a quarterly basis pursuant to this rule must notify the Commission in writing prior to switching from a monthly remittance filing basis to a quarterly remittance filing basis.

003.02 Remittance Worksheets: Remittance worksheets shall be received by the Department no later than the 15th day following the end of a remittance period. In the event the 15th day falls on a weekend or a holiday, the remittance worksheet is due on the next business day.

003.03 Remittances to the NUSF: Except as provided in Rule 003.03A, all remittances ~~shall must~~ be transferred electronically to the Nebraska State Treasurer. Remittances ~~must~~ shall be received by the Nebraska State Treasurer no later than the 15th day following the end of remittance period. In the event the 15th day falls on a weekend or a holiday, the electronic remittance is due on the next business day.

003.03A Department Initiated Remittances: A telecommunications company may elect to have the Department initiate the electronic transfer of such company's remittance to the NUSF.

003.03A1 Authorization and Banking Information: A telecommunications company electing to have the Department initiate the electronic transfer of remittance to the NUSF shall provide the necessary authorization and banking information required by the Director.

003.03A2 Initiation of Transfer: The receipt of a telecommunications company's remittance worksheet will result in the Department's initiation of the electronic transfer of the telecommunications company's remittance to the NUSF if the appropriate indication is made on said remittance worksheet. Said electronic transfer will be done in accordance with authorization granted to the Department by the ~~telecommunications~~ company.

003.04 True-Up: A telecommunications company may, at its option, revise any remittance information previously reported to the NUSF except as provided in Rules 003.04A and 003.04B. Such revision shall be reflected as a net adjustment in the next remittance worksheet filed with the Department.

003.04A Mandatory: Except as provided in Rule 003.04B, if a telecommunications company's reported remittance information varies from actual results by the greater of more than one percent (1%) and one thousand dollars (\$1,000) in a fiscal year, ~~said~~ such company ~~must~~ shall reflect the revised information as a net adjustment to the next remittance worksheet filed with the Department.

003.04B Director Approval: If a telecommunications company's remittance information varies from actual results by the greater of more than ten percent (10%) or one hundred thousand dollars (\$100,000), in such telecommunications company's fiscal year, such ~~said~~ company shall obtain the written approval of the Director before making a net adjustment to the next remittance worksheet filed with the Department.

003.05 Audit Requirements: A company reporting remittance information is subject to an audit consistent with procedures set forth by the Commission. The term "audit" as used in this section and the requirements necessary to fulfill this section shall be further defined by Commission Order. The audit shall include all information used in determining its assessable revenue and a written report of the results of such audit shall be provided to the Department before the end of the calendar year following the audit period.

~~003.05 Audit Requirements~~ 003.05A First Tier: A telecommunications company whose assessable revenue is greater than one

million dollars (\$1,000,000) in a given fiscal year must have an audit shall have all information used in determining its assessable revenue audited. Such audit must be performed on an annual basis and a written report of the results of such audit shall be provided to the Department before the end of the fiscal year next following the audit period.

003.05B Second Tier: A company whose assessable revenue is less than one million dollars (\$1,000,000) in a given fiscal year shall be subject to a remittance audit once every three years. The audit period may include any of the three years in the three year audit cycle.

003.05B1 Audit Waivers: A company whose assessable revenue is less than one hundred thousand dollars (\$100,000) may be granted an audit waiver. To be eligible for a waiver, companies must meet the criteria included in the remittance audit policies. The granting of such waiver is at the sole discretion of the Commission.

003.06 Confidential Treatment: All remittance information provided by companies will be treated as confidential and proprietary by the Department.

003.07 Notice Requirement: A company shall not be required to file remittance information or remit payments when the telecommunications company has no users in the State of Nebraska and no assessable revenue as defined by Rule 001.01C. A company shall notify the Commission in writing prior to the cessation of filing remittances and remittance information.

004 PAYMENTS:

004.01 Nebraska Eligible Telecommunications Carrier:

004.01A Designation of Eligibility: Only a telecommunications company explicitly designated as an NETC by the Commission for the expressly stated purpose of receiving funding from the NUSF by Commission order shall be eligible to receive NUSF funding.

004.02 ~~Supported Services:~~ Payments From the High-Cost Program:

~~004.01B~~ 004.02A Provision of Services:

~~004.01B1~~ 004.02A1 NUSF Funding: An NETC shall only receive NUSF high-cost program funding for the actual provision of supported services as described in Rule 004.02D ~~004.02.~~

~~004.01B2~~ 004.02A2 Provision to All ~~Subscribers~~ Users: An NETC shall provide supported services for which it receives NUSF high-cost program support funding to all requesting ~~subscribers~~ users within a service area.

004.02A3 Reasonably Comparable Rates: An NETC shall charge reasonably comparable rates for supported services as determined by Commission Order.

004.02A4 Benchmark Rates: An NETC shall charge not less than the benchmark rate as determined by Commission Order for basic local exchange service including residential and business services to qualify for high-cost support. The business service benchmark shall be the same as the residential service benchmark.

~~004.01C~~ 004.02B Commission Orders: An NETC ~~must~~ shall be in compliance with all Commission Orders relative to the NUSF in order to be eligible to receive NUSF funding.

~~004.01D~~ 004.02C Additional Criteria: The Commission may impose, on an interim basis, such requirements as it deems reasonably necessary to carry out the goals of the NUSF until such time as a rulemaking can be completed.

~~004.02~~ 004.02D Supported Services:

~~004.02A~~ 004.02D1 Basic Local Exchange Service: Basic local exchange service, for purposes of receiving NUSF high-cost program support ~~funding~~, consists of:

~~004.02A1~~ 004.02D1a Single party service or the functional equivalent within a support area for which an NETC is receiving support, including a block of calling time within a Commission approved local exchange area, for which there are no per-minute or additional charges, that has been approved by Commission order. This does not include extended area service(s).

~~004.02A2~~ 004.02D1b Dual tone multi-frequency signaling or the functional equivalent;

~~004.02A3~~ 004.02D1c A standard "white page" or alpha directory listing at the customer's option;

~~004.02A4~~ 004.02D1d Access to directory assistance services;

~~004.02A5~~ 004.02D1e Equal access to inter-exchange services;

~~004.02A6~~ 004.02D1f Access to emergency 911 or Enhanced 911 services;

~~004.02A7~~ 004.02D1g Access to operator services;

~~004.02A8~~ 004.02D1h Toll blocking for qualifying low-income users ~~subscribers~~.

~~004.02B~~ 004.02D2 Other Services: The Commission may, on an interim basis, designate an additional supported telecommunications service by order until such time as a rulemaking can be completed.

~~004.03~~ 004.02E Required Information: A telecommunications company shall submit ~~the~~ information as reasonably required by the Director for the purpose of calculating NUSF high-cost program support funding. Such information shall be due within 60 days from the date of such request or the date determined by the Director, whichever is later.

~~004.04~~ 004.02F Use of NUSF Funding: NUSF funding shall be used by telecommunications companies solely for the provision, maintenance and upgrading of facilities and services for which support is intended.

004.02F1 Demonstration of Use of NUSF High-Cost Support Required: A telecommunications company that receives NUSF high-cost program support from the high-cost program shall be required to file by June 1 of each year information detailing prior year historical investments and information estimating one year prospective investments by Nebraska wire center or county.

004.02F2 A telecommunications company that receives funding from the NUSF high-cost program shall file other information regarding the use of high-cost program support as required by order of the Commission.

004.02F3 A non-rural telecommunications company that receives funding from the federal high-cost program shall file no later than September 1 each year a description of its rates charged in urban and rural areas so that the Commission may assess and certify to the Federal Communications Commission the comparability of Nebraska rates to rates nationwide.

004.02G Eligibility of Support for the High-Cost Program: High-cost support will be authorized for one facilities-based NETC in a given support area.

004.02G1 A company may petition the Commission to replace the eligible telecommunications company receiving NUSF high-cost program support. The petitioner must provide the following:

004.02G1a The cost to provide the supported services;

004.02G1b An estimate of the amount of NUSF high-cost program support needed in the area;

004.02G1c Benefits to consumers;

004.02G1d The supported services provided in unserved areas;

004.02G1e A demonstration that the quality of service provided would equal the existing service or be better than service provided;

004.02G1f A statement that the petitioner will adopt existing interconnection agreements for the support area; and,

004.02G1g Specific demonstration and documentation of the ability of the petitioner to offer service to everyone on its own network.

004.02G2 If a competitive telecommunications carrier replaces the incumbent telecommunications carrier as provided in section 004.02G1 any carrier of last resort obligations shall be transferred to the competitive telecommunications carrier and the incumbent carrier not receiving high-cost support shall no longer have carrier of last resort obligations.

004.02H Rule 004.02G does not apply to competitive NETCs serving users through the leasing of facilities such as unbundled network elements and authorized to receive NUSF high-cost program support by Commission Order.

004.02I The Director may withhold or reduce NUSF high-cost support distributions from a company found to be in violation of a statute, rule, or Commission order.

004.02J Audit requirements: Companies receiving NUSF high-cost program support shall comply with any audit requirements set forth by the Commission.

004.03 Telehealth Program:

004.03A Usage: All lines that receive NUSF support shall be used solely for the provision of healthcare.

004.03B Eligible Services and Equipment: Eligible services and equipment shall be determined by Commission Order.

004.03C Federal Funding: Hospitals shall first avail themselves of federal funding and other state and federal resources as a precondition of receiving NUSF support. NUSF support shall be considered supplemental and secondary to the receipt of federal funding.

004.03D Annual Funding Maximum: NUSF support for the Telehealth Program per calendar year shall be determined by Commission Order and is contingent upon funds being available.

004.03E Approved Telehealth Support: Support is determined by the Commission approved Telehealth Plan which specifically sets forth a list of hospitals, connection charges and other approved charges eligible for support.

004.03E1 Telehealth Plan Adjustments: Any requests to adjust the Telehealth Plan are to be filed in writing with the Director.

004.03E1a Review of Requests: The Director will review any requests for adjustments to the Telehealth Plan and will make a recommendation to the Commission at a public meeting of the Commission. The Commission will determine whether to approve or deny the recommendation of the Director.

004.03E1b Motion for Reconsideration: A motion for reconsideration may be filed with the Commission within 10 days from the date of Commission action.

004.03F Calculation of Support: All appropriate forms, containing accurate information, and invoice copies must be provided to the Commission for funding to be calculated and released.

004.03F1 Support Schedule: Support will be based on a support schedule issued by the Commission and shall not exceed the amount approved in the Commission-approved Telehealth Plan.

004.03F1a Reasonable Portions: NUSF support will be contingent on the rural hospitals being responsible for paying a portion of their costs for connectivity. The Commission will determine the hospital's portion of connectivity costs by Order.

004.03F2 Payment of Support: Support for the Telehealth Program will be disbursed to the Nebraska Eligible Telecommunications Carrier (NETC) providing the service to the hospital.

004.03F3 Changes to Service: The hospital and/or hospital network shall notify the Commission when any service is changed or terminated, so that support amounts can be modified accordingly.

004.03G Proxy Statement: If the submission of reimbursement requests are being made by a non-rural hub hospital on behalf of its endpoint rural hospital; a statement from each of the hospitals shall be provided to the Commission documenting their agreement to that arrangement.

004.03H Disconnection and Late Fees: A NETC providing telehealth services shall not disconnect or assess late fees on hospital accounts.

004.03I Audit Requirements: Companies receiving telehealth funding shall comply with any audit requirements set forth by the Commission.

004.04 Nebraska Telephone Assistance Program (NTAP):

004.04A Eligibility and Support: Telecommunications companies receiving a designation to be an ETC for the purpose of receiving federal universal service support shall also be required to participate in the NTAP and shall be eligible to receive NTAP support.

004.04B A telecommunications company offering Lifeline service shall comply with section 006 and Commission Orders relating to NTAP for continued eligibility for support.

004.05 Wireless Program:

004.05A Eligibility and Support: Eligibility for the wireless program shall be determined by Commission Order.

004.05B A telecommunications company that receives NUSF support from the wireless program shall be required to file by June 1 of each year information detailing prior year historical investments, information estimating one year prospective investments by Nebraska wire center or county.

004.05C A wireless telecommunications company that receives federal high-cost support shall file information to demonstrate the use of high-cost funding as required by Commission Order.

004.05D A wireless telecommunications company that receives NUSF funding shall not be subject to the same obligations of an NETC receiving high-cost support. Obligations of a wireless carrier receiving NUSF funding may be determined by the Commission on a case-by-case basis and shall be designated by the Commission in an Order.

~~004.05~~ 004.06 Payment Made Procedures: NUSF payments to an NETC will be made on a monthly basis and will be ~~made on~~ processed prior to the last state business day of the month.

~~004.06~~ 004.07 Audit Requirements: A telecommunications company that receives NUSF funding shall have an independent third party perform, and attest to the validity of, an audit pursuant to the requirements in this Rule.

~~004.06A~~ 004.07A Provided Information: All information provided pursuant to Rule ~~004.03~~ 004.02E shall be audited.

~~004.06B Use of NUSF Funding:~~ The audit shall include an attestation regarding the use of NUSF funding and whether such use was in accordance with Rule 004.04.

~~004.06C~~ 004.07B Annual Audit: A telecommunications company that receives NUSF funding shall perform an audit pursuant to this section on an annual basis, except as provided in Rule 004.07C ~~004.06D~~. The results of each annual audit shall be provided to the Department ~~by~~ before the end of the next calendar year following the audit period ~~fiscal year~~.

~~004.06D~~ 004.07C Tri-Annual Audit: A telecommunications company that receives NUSF funding, and does not conduct an annual third party audit in the ordinary course of its business, may elect to perform an independent third party audit pursuant to this Rule once per three-year period. The results of each tri-annual audit shall be provided to the Department by the end of each year that is evenly divided by three.

004.08 Payment Calculation:

004.08A Funding Mechanism: The calculation of NUSF funding shall be determined by a funding mechanism set forth in a Commission Order.

004.08B Annual Determination of Funding: On an annual basis, the Director shall recommend to the Commission the amount of funding available to be disbursed through the high-cost program, the NTAP program, wireless program and the Telehealth Program.

004.08C Adjustments: The Director may make adjustments to funding amounts disbursed to eligible telecommunications companies based on earnings information, investment information, amounts constituting inputs to the benchmark, census information, user count information and other information relevant to the Commission's distribution mechanism when consistent with Commission decisions. The Director may also make adjustments to correct clerical and administrative errors in the disbursement of funding.

004.08C1 An NETC affected by a rule 004.08C adjustment may file a Request for Review with the Commission within thirty (30) days of the adjustment

if the NETC disputes the adjustment or calculation made by the Director.

005 ACCESS PASS-THROUGH:

005.01 Required Pass-Through: A telecommunications company that receives a reduction in charges for access services ordered by the Commission pursuant to Neb. Rev. Stat. Section 86-140 75-609(2) shall pass on said reductions fully to its users subscribers. This reduction shall be passed through to users subscribers in a fair and reasonable manner.

005.02 Companies Required to Demonstrate Pass-Through: The Commission, at its discretion, may require a telecommunications ~~companies~~ company to demonstrate that reductions in access charges have been passed through pursuant to Rule 005.01.

005.03 Demonstration of Pass-Through: A telecommunications company that is required to demonstrate compliance with Rule 005.01 pursuant to Rule 005.02 shall demonstrate such compliance in accordance with a consistent set of data in a manner acceptable to the Commission.

005.03A Submission of Information: Information to demonstrate compliance with Rule 005.01 shall be submitted within 60 days of receiving notice from the Commission or by the date specified by the Commission, whichever is later.

006 ~~NEBRASKA LIFELINE AND LINK-UP PROGRAMS~~ NEBRASKA TELEPHONE ASSISTANCE PROGRAM (NTAP):

006.01 General:

006.01A NTAP Number: NTAP Number shall mean the numeral assigned to an NTAP applicant filed by the Department.

006.01B NTAP Number Requirement: A telecommunications company shall only provide Lifeline and Linkup discounts to those users that have an assigned NTAP Number.

006.01C Monthly Reporting: A telecommunications company offering discounts shall report to the Department on a monthly basis information regarding Lifeline discount recipients in the manner set forth by the Department.

006.01D Audit Requirements: Any company receiving NTAP support shall comply with any audit requirements set forth by the Commission.

~~006.01~~ 006.02 Lifeline Service Program:

~~006.01A~~ 006.02A Defined: Lifeline service shall mean the offering of ~~basic local exchange services~~ a recurring service consisting of these features described in Rule 004.02A defined by Commission Order, at a reduced rate to qualifying users subscribers.

~~006.01B~~ 006.02B Reduction in Rates: Telecommunications companies that offer Lifeline service shall offer such service at the reduced rates specified by Order of the Commission.

006.02B1: Companies that offer Lifeline service shall apply any appropriate credits for a qualifying user in accordance with the eligibility date as provided by the Department.

006.02B2: Companies that offer Lifeline service shall apply any appropriate credits or removal of credits onto the user's account within sixty (60) days of receiving notice from the Department.

006.02B3: Qualifying users may receive the Lifeline credit on only the primary residential line per household.

~~006.01C~~ 006.02C Requirement to Offer Service: In cases where a qualifying ~~subscriber~~ user has a past due balance, a telecommunications ~~companies~~ company ~~must~~ shall provide Lifeline services to that ~~subscriber~~ user as long as said ~~subscriber~~ user is making monthly payments towards any past due amounts.

~~006.01D~~ 006.02D Toll Limitation/Blocking Service: Telecommunications companies that offer Lifeline service shall offer ~~toll blocking~~ such service(s), if such service is available, to all qualifying ~~users~~ subscribers at the time such persons subscribe to Lifeline service.

006.02D1 Companies that offer limitation/blocking service shall not charge Lifeline users for receiving said service if reasonable reimbursement is available as defined by Commission Order.

~~006.01E~~ 006.02E Service Deposits: Telecommunications companies that offer Lifeline service shall not collect a service deposit to initiate Lifeline service, if the qualifying ~~subscriber~~ user voluntarily elects toll blocking from the company, if available.

~~006.01E1~~ 006.02E1 If toll blocking is unavailable, the telecommunications company may collect a service deposit.

~~006.01E2~~ 006.02E2 If a qualifying user ~~subscriber~~ has a past due amount, the telecommunications company may not collect a service deposit if the ~~subscriber~~ user is making reasonable monthly payments towards any past due amounts.

~~006.01F~~ 006.02F Disconnection:

~~006.01F1~~ 006.02F1 Telecommunications companies that offer Lifeline service shall not disconnect a qualifying ~~subscriber~~ user for non-payment of toll

charges not directly a part of the Lifeline service if limitation/blocking services are available, unless granted a written waiver by the Commission for a specific user customer.

~~006.01F1a~~ 006.02F1a Upon reasonable notice, a telecommunications company may block a qualifying ~~subscriber's~~ user's access to toll services and other services not directly a part of the Lifeline service, for non-payment.

~~006.01F2~~ 006.02F2 Telecommunications companies that offer Lifeline service shall not disconnect a qualifying ~~subscriber~~ user for non-payment until 60 days after all Lifeline and Link-Up credits due for a particular billing period have been fully applied to any billed amounts for which the qualifying ~~subscriber~~ user has not made full and complete payment.

006.02F3 In cases where a qualifying user has been disconnected for more than six (6) months, a telecommunications company shall obtain verification of continued eligibility from the Department before re-applying the Lifeline service to the qualifying user's account.

006.02F3A A qualifying user shall be considered disconnected if said user is not receiving Lifeline service from any company that offers Lifeline service.

~~006.02~~ 006.03 Link-Up Program:

~~006.02A~~ 006.03A Defined: Link-Up service shall mean a reduction in the telecommunications company's customary charge for commencing Lifeline service for a single connection at a ~~subscriber's~~ user's principal place of residence.

006.03B Reduction: The Link-Up reduction shall be either half of the amount of connection charges or thirty dollars (\$30), whichever is less.

~~006.02B1 Deferred Payment Schedule: Telecommunications companies that offer Link-Up service must offer a deferred schedule of payment for connection charges, for which the subscriber does not pay interest. Charges of up to two hundred dollars (\$200) may be deferred for a period not to exceed one year.~~

006.03C Deferred Payment Schedule: A telecommunications company that offers Link-Up service shall offer a deferred schedule of payment for connection charges, for which the user does not pay interest. Charges of up to two hundred dollars (\$200) may be deferred for a period not to exceed one year.

006.03D Qualifying users may receive the Link-Up credit on only the primary residential line per household.

~~006.02C~~ 006.03E Subsequent Benefits: Telecommunications companies that offer Link-Up service shall allow a user ~~subscriber~~ to receive the benefit of the Link-Up program for a second or subsequent time only for a principal place of residence with an address different from the residence at which the Link-Up assistance was previously provided.

~~006.03~~ 006.04 Qualifications:

~~006.03A~~ 006.04A Programs: To qualify for the Lifeline and/or Link-Up programs, a ~~subscriber must~~ user shall be eligible to receive aid from at least one of the following:

- (1) Medicaid;
- (2) Food Stamps;
- (3) Supplemental Security Income (SSI);
- (4) Federal Public Housing Assistance; or
- (5) Low Income Home Energy Assistance Program (LIHEAP).
- (6) Children's Health Insurance Programs (SAM, MAC, E-MAC, and Kids Connection), as the financially responsible adult.

~~006.03A1~~ 006.04A1 The Commission may, on an interim basis, designate additional low-income eligibility criteria by order until such time as a rulemaking can be completed.

~~006.03B~~ 006.04B Subscriber User Name: The ~~subscriber~~ user that receives aid from a program listed in Rule ~~006.03A~~ 006.04A ~~must~~ shall have his or her name on the account with the telecommunications company in order to qualify to receive support from the Lifeline and/or Link-Up programs, unless granted a waiver by the Commission for a specific user.

~~006.04~~ 006.05 Requirements to Offer:

~~006.04A~~ 006.05A All NETCs ~~that offer exchange services designated by the Commission for the purposes of receiving support from the NUSF~~ shall be required to offer Lifeline and Link-Up services to qualifying ~~subscribers~~ users.

~~006.04B~~ 006.05B The Commission may, at its discretion require, upon notice and hearing, a telecommunications company ~~that provides exchange services~~ to provide Lifeline and Link-Up services to qualifying ~~subscribers~~ users.

006.06 Reporting Requirements:

006.06A In cases where the Department requests information regarding a qualifying user's account, the company providing

service shall provide all information requested by the Department.

006.06A1 The Department shall treat all user account information provided by the company as confidential.

006.06B Any telecommunications company shall comply with all reporting requirements of the Commission.

006.06B1 Telecommunications companies shall comply with reporting requirements in the manner prescribed by the Department.

~~006.05~~ 006.07 Directory: Telecommunications companies that offer ~~Lifeline and/or Link-Up~~ NTAP and telephone directory services shall provide printed information describing such programs in telephone directories.

~~006.05A~~ 006.07A Required Information: The information listed in telephone directories shall contain information on the following:

- (1) Voluntary toll blocking; and
- (2) Availability of reduced deposits.

~~006.05B~~ 006.07B Directory Index: If the telephone directory provided by a telecommunications company that offers Lifeline and/or Link-Up services contains an index, a reference to the information regarding such services shall be listed in the index.

~~006.06~~ 006.08 Advertising: Telecommunications companies that offer ~~Life-line and/or Link-Up~~ NTAP services shall advertise the availability of such services through a bill insert or prominent bill message on an annual basis.

~~006.07~~ 006.09 Notification: Telecommunications companies that offer Lifeline service shall inform all qualifying ~~subscribers~~ users at the time said persons subscribe to Lifeline service that credits due may not appear on their initial bills and that service will only be disconnected in accordance with Rule 006.02F ~~006.01E~~.

007 ADMINISTRATIVE PENALTIES:

007.01 Violation of Rules: A ~~telecommunications~~ company not in compliance with ~~Section 003.02, 003.03, 003.04, 004.03, 004.04, 004.06C, 006.06D, 005.01, and 005.03A~~ Neb. Rev. Stat. Sections 86-316 to 86-329 or the rules and regulations adopted and promulgated thereunder ~~is may~~ be subject to civil penalties as provided in Title 291, Chapter 1, Section 027 of the Rules of Commission Procedure.

007.02 Refusal to Pay an Administrative Fine: A ~~telecommunications~~ company that refuses or fails to pay an administrative fine within sixty (60) days from the date the fine is imposed shall be subject to Rule 007.04.

007.03 Repeated Violations: A telecommunications company that repeatedly violates the NUSF Rules shall be subject to Rule 007.04.

007.04 Show Cause Order: A telecommunications company that is in violation of Rule 007.02 or 007.03 shall be subject to a Show Cause Order filed pursuant to the Rules of Commission Procedure and the following penalties may be imposed on such company:

007.04A Certificated or Permitted Telecommunications Company: A telecommunications company that holds a Certificate of Public Convenience and Necessity or a permit granted by the Commission may have such certificate or permit revoked.

007.04B Non-Certificated or Permitted Telecommunications Company: A telecommunications company that does not hold a Certificate of Public Convenience and Necessity or a permit from the Commission may be ordered to cease and desist from providing telecommunications services in Nebraska intrastate commerce.

007.05 Fine Limits: No administrative fine may exceed the limits set forth in the Neb. Rev. Stat. Section 75-156.

007.06 Notice: Whenever the Commission seeks to impose an administrative penalty pursuant to Rule 007 due to a violation, the Director or the Commission shall notify such ~~telecommunications~~ company in writing sent by certified United States mail, return receipt requested, (a) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based, (b) specifically identifying the particular statute, certificate, permit, or order violated, (c) that a hearing will be held and the time, date, and place of the hearing, (d) that in addition to the civil penalty provided in Rule 007, that the Commission may enforce additional penalties and relief as provided by law, and (e) that upon failure to pay any civil penalty determined by the Commission, the penalty may be collected by civil action in the District Court of Lancaster County, Nebraska.

007.06A Waiver of Hearing: Any ~~telecommunications~~ company that receives notice of a violation of Rule 007 pursuant to Rule 007.06 may waive its right to a hearing and comply with any civil penalties described in said notice. The hearing will be canceled only upon receipt of a written request from the affected ~~telecommunications~~ company and receipt of any administrative penalties that are due.